State of Wisconsin Governor Scott Walker

#### Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE:

April 30, 2014

TO:

Board of Agriculture, Trade and Consumer Protection

FROM:

Sandy Chalmers, Administrator, Division of Trade and Consumer Protection

SUBJECT:

ATCP 104 Leaf Tobacco Buying and Selling Hearing Draft

PRESENTED BY: Jeremy McPherson

#### REQUESTED ACTION:

At the May 14, 2014 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposal to repeal rules related to Leaf Tobacco Buying and Selling (copy attached).

#### **SUMMARY:**

#### Background

The existing ch. ATCP 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

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This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

#### Rule Content

This rule would repeal chapter ATCP 104, Leaf Tobacco, Buying and Selling, in its entirety.

#### Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATCP 104, Wis. Adm. Code.

#### Comparison with Rules in Adjacent States

There are no known rules in adjacent states that are comparable to ch. ATCP 104, Wis. Adm. Code.

#### Summary of Factual Data and Analytical Methodologies

This proposed rule simply deletes an unused chapter from the administrative code. It does not rely on factual or analytical data other than anecdotal information that growing under contract has replaced cash markets.

#### Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

Since repealing the rule has no effect on business (see above), no analysis is required under this section.

#### Effect on Small Business

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code. DATCP does not anticipate any effect on small business.

#### Next Steps

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. DATCP will hold public hearings on the dates and at the locations specified in the hearing notice. The hearing dates and locations have not yet been determined.

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Following the public hearings, DATCP will prepare a final draft rule for the Board's consideration. If the Board approves a final draft rule, DATCP will transmit that final draft rule to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

#### Proposed Hearing Draft Rule April 30, 2014

## PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION ADOPTING RULES

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
- 2 rule to repeal ch. ATCP 104 relating to Leaf Tobacco Buying and Selling.

### <u>Analysis Prepared by the Department</u> of Agriculture, Trade and Consumer Protection

#### Statutes Interpreted

Statutes Interpreted: s. 100.20 (1), Stats.

#### Statutory Authority

Statutory Authority: ss. 93.07 (1) and 100.20 (2)(a), Stats.

#### Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate administrative rules forbidding trade practices which are determined by the department to be unfair and prescribing trade practices that are determined by the department to be fair.

#### Related Statutes and Rules

There are no Wisconsin Statutes or other rules that regulate transactions between tobacco growers and tobacco buyers.

#### Plain Language Analysis

#### Background

The existing ch. ATCP 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

 Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.

- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

#### **Rule Content**

This rule would repeal chapter ATCP 104, Leaf Tobacco, Buying and Selling, in its entirety.

#### Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATCP 104, Wis. Adm. Code.

#### Comparison with Rules in Adjacent States

There are no known rules in adjacent states that are comparable to ch. ATCP 104, Wis. Adm. Code.

#### Summary of Factual Data and Analytical Methodologies

This proposed rule simply deletes an unused chapter from the administrative code. It does not rely on factual or analytical data other than anecdotal information that growing under contract has replaced cash markets.

#### Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

Since repealing the rule has no effect on business (see above), no analysis is required under this section.

#### Effect on Small Business

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code. DATCP does not anticipate any effect on small business.

#### **DATCP Contact Person**

Questions and comments related to this rule may be directed to:

Jennifer Heaton-Amrhein
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: jennifer.heatonamrhein@wisconsin.gov

#### Place where comments are to be submitted and deadline for submission

Questions and comments related to this rule may be directed to:

Jennifer Heaton-Amrhein
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: jennifer.heatonamrhein@wisconsin.gov

The deadline for submitting hearing draft comments will be determined at a later date.

- **SECTION 1.** Chapter ATCP 104 is repealed.
- 2 SECTION 2. EFFECTIVE DATE: This rule takes effect on the first day of the third month
- following publication in the Wisconsin administrative register, as provided in
- 4 s. 227.22(2)(intro.), Stats.

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Dated this	day of,
	WISCONSIN DEPARTMENT OF AGRICULTURE.
	TRADE AND CONSUMER PROTECTION
	By:
	Ben Brancel
	Secretary

#### Wisconsin Department of Agriculture, Trade and Consumer Protection

#### **Initial Regulatory Flexibility Analysis**

Rule Subject: Leaf Tobacco Buying and Selling

Adm. Code Reference: ATCP 104

Rules Clearinghouse #: Not yet assigned

*DATCP Docket #:* 14-R-01

#### Rule Summary

This rule would repeal chapter ATCP 104, Leaf Tobacco, Buying and Selling, in its entirety.

#### Background

The existing ch. ATCP 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

#### Small Business Affected

The existing rule regulates certain transactions between tobacco growers and tobacco manufacturing or brokerage firms. Tobacco growers are likely to be small businesses. However, the existing rule is limited to regulating cash-market transactions for tobacco leaves (which would occur after the crop is harvested). Wisconsin grown tobacco is no longer traded with this type of transaction. Instead, Wisconsin tobacco growers generally grow and sell on contracts that are negotiated before the growing season begins. Therefore, the existing rule is obsolete and has no effect on small business.

This proposed rule would simply delete an outdated and obsolete chapter from the administrative code. DATCP does not anticipate any effect on small business.

#### Reporting, Bookkeeping and other Procedures

The proposed rule does not require any additional reporting, bookkeeping or other procedures.

#### Professional Skills Required

The proposed rule does not require and additional professional skills.

#### Accommodation for Small Business

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code, and does not have any effect on small business. Therefore, no accommodation is necessary.

#### Conclusion

This rule does not have any impact on businesses, including "small businesses." It is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

Sandy Chalmers, Administrator

Division of Trade and Consumer Protection

# **ADMINISTRATIVE RULES**

FISCAL ESTIMATE  AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
☑ Original ☐ Updated ☐ Corrected		
Administrative Rule Chapter, Title and Number		
Ch. ATCP 104 Leaf Tobacco Buying and Selling		
Subject		
Leaf Tobacco Buying and Selling		
Fund Sources Affected Chapter 20, Stats. Appropriations Affected		
□ GPR □ FED □ PRO □ PRS □SEG SEG-S		
Fiscal Effect of Implementing the Rule		
No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs		
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget		
Decrease Costs		
The Rule Will Impact the Following (Check All That Apply)		
State's Economy Specific Businesses/Sectors		
Local Government Units Public Utility Rate Payers		
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
☐ Yes ⊠ No		
Policy Problem Addressed by the Rule		
The existing rule regulates certain transactions between tobacco growers and tobacco manufacturing or brokerage firms. However, the existing rule is limited to regulating cash-market transactions for tobacco leaves (which would occur after the crop is harvested). Wisconsin grown tobacco is no longer traded with this type of transaction. Instead, Wisconsin tobacco growers generally grow and sell on contracts that are negotiated before the growing season begins. Therefore, the existing rule is obsolete.		
This proposed rule would simply delete an outdated and obsolete chapter from the administrative code.		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
This proposed rule would simply delete an outdated and obsolete chapter from the administrative code. DATCP does not anticipate that it would have any economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
Benefits		
This proposed rule removes an obsolete and unneeded chapter from the Administrative Rules.		

#### Alternatives

DATCP could leave ch. ATCP 104, Wis. Stats. in place. The rule is obsolete, and does not impose any costs or benefits on tobacco growers or tobacco buyers.

DATCP could also modify the rule to make it more relevant to contemporary leaf-tobacco transactions.

Long Range Implications of Implementing the Rule

See the discussions above.

Compare With Approaches Being Used by Federal Government

There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATCP 104, Wis. Adm. Code.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

There are no known rules in adjacent states that are comparable to ch. ATCP 104, Wis. Adm. Code.

Comments Received in Response to Web Posting and DATCP Response

No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website.